



FISCAL MEMORANDUM

HB 2244 - SB 2841

March 28, 2022

SUMMARY OF BILL AS AMENDED (016649): Creates Class A felony offenses of especially aggravated rape, especially aggravated rape of a child, and grave torture. Requires individuals convicted to be sentenced to life without possibility of parole. Requires sentence for a juvenile convicted to be as a Range III offender. Authorizes an individual convicted of grave torture be sentenced to death upon following either the issuance of the judgement in a decision of the United States Supreme Court overruling, in whole or in part, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), allowing the use of the death penalty for such an offense or ratification of an amendment to the Constitution of Tennessee approving the use of the death penalty for such offense.

FISCAL IMPACT OF BILL AS AMENDED:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- The proposed legislation creates a Class A offense felony of especially aggravated rape, defined as the unlawful sexual penetration of a victim by the defendant or the defendant by a victim that would constitute aggravated rape under Tenn. Code Ann. § 39-13-502 accompanied by two or more outlined criteria.
- The proposed legislation further creates a Class A offense felony offense of grave torture, defined as the infliction of severe physical and mental pain or suffering upon the victim with the intent to perpetrate first degree murder and accompanied by three or more of the outlined criteria.
- Per the language of the legislation, an individual convicted of such offenses is required to be sentenced to life without possibility of parole; juvenile offenders are required to be sentenced as a Range III offender.
- This analysis assumes individuals charged with especially aggravated rape pursuant to this legislation would be charged with a Class A felony offense of aggravated rape pursuant to Tenn. Code Ann. § 39-13-502 under current law.
- This analysis assumes individuals charged with grave torture pursuant to this legislation would be charged with a violent sexual offense pursuant to Tenn. Code Ann. § 40-39-202(31) under current law.
- Tennessee Code Annotated § 40-39-202(31) lists 27 violent sexual offenses. For purposes of this analysis, it is assumed an individual would be charged with a Class A felony offense of aggravated rape pursuant to Tenn. Code Ann. § 39-13-502 under current law.

- Based upon information provided by the Department of Correction (DOC), there has been an average of 18 admissions in each of the last 10 years for the Class A felony offense under Tenn. Code Ann. § 39-13-502 for aggravated rape with an estimated average time served of 20.72 years.
- Of the 18 admissions, approximately 15 percent or 2.7 (18 x 15.0%) were an offender who was a juvenile at the time of the offense.
- Pursuant to Tenn. Code Ann. § 40-35-112(c)(1), a Range III sentence for a Class A felony is not less than 40 years nor more than 60 years.
- Requiring a juvenile defendant convicted of especially aggravated rape or grave torture to be sentenced as a Range III offender, and an adult defendant to be sentenced to imprisonment for life without possibility of parole, may lead to additional incarceration costs sometime after July 1, 2042; however, this analysis estimates the highest cost for admissions in the next 10 years. Therefore, any additional time added by the proposed legislation resulting in sentences exceeding 10 years in length surpass the window of this analysis.
- Authorizing an individual convicted of grave torture with the intent to perpetrate first degree murder be sentenced to death upon following either the issuance of the judgement in a decision of the United States Supreme Court overruling, in whole or in part, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), or ratification of an amendment to the Constitution of Tennessee approving the use of the death penalty for such offense will not significantly impact incarceration costs.
- The proposed legislation creates a Class A offense felony of especially aggravated rape of a child, defined as the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is less than eighteen years of age, accompanied by three or more of the outlined criteria.
- Per the language of the legislation, an individual convicted of such offense is required to be sentenced to life without possibility of parole; juvenile offenders are required to be sentenced as a Range III offender.
- This analysis assumes individuals charged with especially aggravated rape of a child pursuant to this legislation would be charged with aggravated rape pursuant to Tenn. Code Ann. § 39-13-502 under current law.
- Based upon information provided by the DOC, there has been an average of 18 admissions in each of the last 10 years for the Class A felony offense under Tenn. Code Ann. § 39-13-502 for aggravated rape, with an estimated average time served of 19.12 years, after adjusting for pre-trial jail credits.
- Pursuant to Tenn. Code Ann. § 40-35-112(c)(1), a Range III sentence for a Class A felony is not less than 40 years nor more than 60 years.
- This analysis estimates the highest cost for admissions in the next 10 years; therefore, any additional time added by the proposed legislation resulting in sentences exceeding 10 years in length surpass the window of this analysis.
- Any impact to incarceration resulting from the creation of the offense of especially aggravated rape of a child is estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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